

Book Reviews

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Book Reviews

MARYLAND ANNOTATIONS TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF AGENCY. Prepared by A. James Casner, under the auspices of the Maryland State and Baltimore City Bar Associations. Published by the American Law Institute Publishers, 1936, pp. vi, 315.

As is now well known, the American Law Institute has been engaged since 1923 on the task of preparing and publishing a "Restatement" of the Common Law as existing in this country. For this purpose it has enlisted a large and representative group of judges, practicing lawyers and law school teachers in its body. It has been enabled to prosecute so great an undertaking by liberal appropriations from the Carnegie Corporation. The results of its labors are being published in the form of "Restatements" of different branches of the common law. These publications present in the form of black-letter text, comments, illustrations and notes what, after lengthy study and investigation, has been adopted by the Institute as a sound statement and analysis of the rules of the common law on the subject in question, drawn from the decisions of the courts of all of the States.

Such Restatements however are not supported by citations of the authorities; and do not, in most cases, where there is a difference among the courts of this country upon any of the points in question, undertake to give the conflicting decisions thereon.

It has been planned, however, that there should be published, as supplements to these Restatements, annotations thereof for each State, presenting the decisions of such State which support the conclusions of the Restatement; and, in cases where courts of the state have adopted a different position, clearly setting forth the extent of such disagreement. It is hardly necessary to say that the utility of the Restatements to a practicing lawyer, or to a law teacher, will be immensely increased by having available such a supplement, containing in substance a digest of the decisions of the local state on every part of the subject, and clearly di-

recting attention to the fact whether or not the view adopted by the Institute as to what is the accepted or better rule, has been also adopted, or dissented from, by the courts of the state.

Among the topics covered by the Restatements now published by the Institute is that of Agency. With the help of appropriations made by the Maryland State and Baltimore City Bar Associations, Maryland annotations to a number of these subjects have been for some time in course of preparation. The first compilation of these to be completed and published is that on the subject of Agency, which has been prepared by Professor Casner (lately of the Law School of the University of Maryland and now of the College of Law of the University of Illinois) with the assistance of a number of workers such as is necessary for so laborious a work.

It should be a matter of great satisfaction to those who are interested in the carrying on of this work, that Professor Casner has produced such an excellent compilation and that the first of these local annotations published for this State should be so well done. The arrangement, of course, follows that of the Law Institute's Restatement, and the text is in the form of local notes to each successive section thereof. These not only state the decisions which support the detailed statements in the section annotated, but also give wherever necessary the gist of the local decision. They of course call attention to any apparent conflicts, with adequate, though necessarily concise, explanation and discussion.

Dr. Johnson facetiously included in his definition of a lexicographer, that he was a "harmless drudge". While undoubtedly much drudgery must have gone into the preparation of a work of this character, yet even a cursory examination of Professor Casner's text shows how much scope is given for qualifications of a much higher order. There are apparent critical appreciation and distinction in dealing with the mass of authorities; clear, concise and incisive presentation of their substance; grasp both of the general subject dealt with and of the method of treatment and sub-

division used in the Institute's Restatement; and a just sense of proportion in deciding just where explanation and quotation are called for in reducing so large a mass of material to a concise yet adequate whole.

It is reassuring to find how general is the agreement as to the law upon this particular subject of agency between the conclusions adopted by the Institute and the decisions of our own Court of Appeals. In practically no case does there appear to be any wide difference between them. In many cases the Restatement pursues the subject into special situations which our Court of Appeals has not had, as yet, occasion to consider; and in one or two cases, on the contrary, questions have been considered by it which involve distinctions beyond those dealt with in the Restatement.

—CHARLES MCH. HOWARD.*

LAW AND THE LAWYERS. By Edward Stevens Robinson. New York. The Macmillan Company. 1935. pp. xi, 348.

Four years ago, Professor Robinson and Professor Thurman W. Arnold inaugurated a joint seminar at the Yale Law School. The enterprise attracted considerable interest in law school circles, because while Professor Arnold is a teacher of law, Professor Robinson is a teacher of psychology. A quarter of a century earlier the late Professor Munsterberg, in a vigorous, if ill advised (as it subsequently developed) book *On the Witness Stand*, had soundly berated the legal profession for its failure to utilize psychological knowledge in the functioning of the judicial process. The reply of the legal profession, led by Professor Wigmore, was so crushing that no other psychologist dared entertain similar thoughts, at least in public, for fully twenty-five years. Under the progressive leadership and protection of the Yale Law School and Professor Arnold, psychology now reappears on the legal scene in the form of Professor Robinson's book—the fruit of the joint seminar. It is a companion volume to Professor Arnold's *Symbols of*

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Government, also the product of the seminar, but with its material treated primarily from the standpoint of the legal scholar.

Professor Robinson's book is, in essence, a plea for co-operation between law and psychology. It should not be confused with the meretricious and well advertised works which offer to teach the trial lawyer the basic principles of psychology as an aid in the examination of witnesses. It is a sober, informed study of the legal process by a competent psychologist and as such it is the most noteworthy volume of its kind which has yet appeared.

Nevertheless, for all its merits, the book in its general theory has serious drawbacks. Professor Robinson's fundamental notion is "that every important legal problem is at bottom a psychological problem".¹ It is a common failing of the students of the separate sciences that each likes to believe his own particular field of study is basic to all other knowledge, but it is a failing which today at any rate is not customarily paraded in public. Professor Robinson's argument in support of his position is that "law is concerned with the regulation, mitigation and composition of human disputes. The fundamental stuff with which it deals is therefore psychological. Bodily welfare, money, contracts get into the realm of law only by becoming matters of behavior, feeling, thought, belief; it is of these latter that disputes are made".² Professor Robinson here arbitrarily adopts the view of the so-called realists that "law" is what officials do about "disputes"; no attempt is made to show the psychological basis of "law" in the senses in which it is employed by the radically differing analytical, historical and philosophical schools. Moreover, even adopting Professor Robinson's view of law, it does not follow that all juristic problems are ultimately psychological. All the social sciences study human behavior, but they study it each from a separate point of view. At the present time it is premature to assume that any particular point of view is fundamental and the others derivative. We have no knowledge at all upon which such an assumption can rest.

¹ P. 51.

² P. 72.

Professor Robinson's next general notion is that the specific contribution of psychology to law lies in its point of view, its "persistent intellectual curiosity" about human behavior.³ He expressly rejects the notion that the contribution of psychology lies in the "knowledge" or "psychological laws" which it establishes. This contention is as extraordinary as the preceding one. The intellectual curiosity of psychology with respect to human behavior is no different, in kind or degree, from that of any of the other social sciences. The justification of all science is that it gratifies our intellectual appetites; the mainspring of its action is intellectual curiosity and only secondarily the possibility of fruitful application. To assert that the "intellectual curiosity" of psychology is its specific contribution to law is a statement devoid of all meaning. What reason has Professor Robinson for assuming that legal research is not prompted by "intellectual curiosity" about human behavior as it manifests in the legal process? There does indeed seem to be a confusion in Professor Robinson's own thought, for later he recognizes the necessity of legal students acquainting themselves with "knowledge of the progress of psychological investigation"⁴ although he began by rejecting the notion that the law should utilize the established findings of psychology. He insists for example that it is essential that a naturalistic jurisprudence take cognizance of Ebbinghaus' researches on memory; otherwise, the rules governing the admission and exclusion of testimony are apt to be without any empirical foundation. Here, in the knowledge which it establishes, would seem to lie the real contribution of psychology, and not in its so-called "intellectual curiosity".

With his general notions out of the way Professor Robinson next proceeds to a more detailed discussion of the judicial process in the light of the facts established by modern psychology. Here his analysis is shrewd and informed. Its greatest weakness perhaps is that it is not systematic. The points he chooses for discussion are apparently selected

³ Pp. 99, 118-121.

⁴ P. 118.

at random, but no doubt this is inescapable in the present development of psychology. It is discussion of the character which Professor Robinson carries on in this part of his book which will lead to improvement in legal technology. Contributions of this type from students of the other social sciences are a prime necessity of legal administration at this time. Professor Robinson deserves the gratitude of the profession for his initiation of the discussion.

—HUNTINGTON CAIRNS.*

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